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THE ANDHRA PRADESH GAZETTE
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W.No.43

AMARAVATI, FRIDAY, OCTOBER 27, 2023

G.834

PART II - MISCELLANEOUS NOTIFICATIONS OF INTEREST TO THE PUBLIC

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NOTIFICATIONS BY HEADS OF DEPARTMENTS Etc.,

**I ADDITIONAL SENIOR CIVIL JUDGE'S COURT
GUNTUR**

Thursday, the 17th day of August, 2023

INSOLVENCY PETITION NO.60/2021

Between:

Sannayila Nagur, S/o Narendra, Hindu, aged about 31 years, R/o D.No.118,
Near Baji Baba Dargah, Pedakakani Village and Mandal, Guntur.

...PETITIONER.

AND

1. Sukhavasi Ravichandra, S/o Not known, Hindu, aged about 50 years, Business, R/o C/o Ravichandra Pawn Brokers, Opp. Yedukondalu Foundry, near Alankar theatre, Maris Pet, Tenali, Guntur District.
2. Shaik Baji, S/o Not known, Muslim, Business, aged about 60 years, Near zanda Chettu, Opp. Masjid, Telaprolu Village, Tenali mandal, Guntur District.
3. Shaik Mastan, S/o Not known, Muslim, aged about 60 years, working as Moujan, Baji Baba Dargah, Pedakakani village and Mandal, Guntur District.
4. Mila Venkata Rao, S/o Not known, Hindu aged about 60 years, C/o Yedukondalu foundry, near Alankar Theatre, Maris Pet, Tenali, Guntur District.

5. Shaik Mustafa, S/o Nannesa, Muslim, aged about 35 years, Muslimpalem, Near Zanda Chettu, Venigandla village, Pedakakani Mandal, Guntur District.
6. Shaik Rasool, S/o Galisa, Muslim, aged about 30 years, Near Zanda Chettu, Muslimpalem, Venigandla village, Pedakakani Mandal, Guntur District.
7. Pathan Mastan, S/o Meera Saheb, Muslim, aged about 45 years, C/o Baji Baba Hotel, Baji Baba Dargah premises, Pedakakani Village and Mandal, Guntur District.

...RESPONDENTS.

This petition coming on 10.08.2023 for final hearing before me in the presence of Sri G. Narasimha Rao, Advocate for petitioner and R1 to R7 remained exparte, and the matter having stood over for consideration till this day, this Court made the following:-

:: ORDER ::

1. This petition is filed under Section 10 of the Provincial Insolvency Act (for brevity, "the Act") to adjudge the petitioner as insolvent.
2. The main case of the petitioner, in brief, is that,
 - i) he is a car driver. His parents are both elderly. Owing to his extensive experience in the motor field, he used to buy and sell second-hand cars. In that connection, he borrowed amounts from the creditors to purchase cars. After selling the cars, he used to repay amounts to creditors together with interest. In that course, he had to borrow amounts at a higher rate of interest to purchase the cars.
 - ii) In some cases, he could not sell the cars within time, so he had to bear the loss and pay the loan amount with interest. While so, he sustained huge losses from April, 2020, due to COVID-19 pandemic lockdown. He waited for a profitable sale, but he was forced to sell the cars at lesser amount on the pressure of his creditors to repay debts

with interest. Consequently, he sustained loss. He is unable to repay the amounts. As such, interest amount indebted by the petitioner was increased from time to time.

iii) He has no other source of income to repay the debt. Taking advantage of his financial crisis, respondents are threatening him to discharge the debts. For some days, the petitioner adjusted the amounts and could answer them, but slowly the respondents, one by one became violent and threatened the petitioner to discharge the amounts due to them. Some of the respondents tried to kidnap him. Somehow, he escaped from their clutches.

iv) For some time, even for the adjustment of interest on the amounts due to the creditors, the petitioner was compelled to take amounts at several places but was unable to adjust the amounts and satisfy the creditors. Taking advantage of his position, respondents are threatening to file suits against the petitioner for recovery of the debts, and the petitioner is unable to pay the amounts actually due to them. Further, they adopted forcible and violent methods against the petitioner to recover the amount due to them. As he has no other option, he filed the present insolvency petition to adjudge him as insolvent.

3. On service of notices, respondents 1 to 7 did not appear before the court either personally or through their counsel. As such, they were set exparte.

4. **Now the point for determination is:-**

Whether the petitioner is entitled to be declared as an insolvent as prayed for?"

5. During course of enquiry, the petitioner himself examined as P.W.1. No documents are marked on his behalf. On the other hand, respondents did not adduce either oral or documentary evidence.

6. Heard arguments.

7. Perused the record.

P O I N T :-

8. This petition was filed under Section 10 of the Act. So, it is apropos to go through the prerequisites laid down under Section 10 of the Act to enable the debtor to file the petition. The relevant portion of Section 10(1) reads as follows:

Sec.10 (1): "A debtor shall not be entitled to present an insolvency petition, unless he is unable to pay his debts."

9. The very beginning words of section 10(1) enunciates that, inability to pay the debts is SINE QUA NON for filing insolvency petition by the debtor.

10. Section 24 deals with 'procedure at hearing'. The relevant portion of section 24 reads as follows :

Sec.24 (1): "On the date fixed for hearing of the petition, the court shall require proof of the following matters:

(a) The creditor or debtor, as the case may be, is entitled to present the petition.

Provided that, where the debtor is the petitioner, he shall, for the purpose of proving his inability to pay his debts, be required to furnish only such proof as to satisfy the Court that there are prima facie grounds for believing the same.

Sec.24 (2): The Court shall also examine the debtor, if he is present, as to his conduct, dealings and property in the presence of such creditors as appear at the hearing, and the creditors shall have the right to question the debtor thereon."

11. When I.P. filed by the debtor shall be dismissed as laid down under section 25(2) of Provincial Insolvency Act, reads as follows:

"The Court shall dismiss the petition if it is not satisfied of his right to present the petition."

12. On a combined reading of Sections 10, 24 and 25(2), it is abundantly clear that the petitioner/debtor is not entitled to be declared as insolvent merely for asking it, and the Court has to verify the existence of prima facie grounds for considering the plea of the debtor to declare him as an insolvent.

13. At this juncture, it is relevant to go through Judgments of our own High Court. In Dasari Srihari Rao Vs Talluri Harinadha Babu¹. Wherein the Hon'ble Division bench of our High Court succinctly held as follows:

"The debtor, who files an application to adjudge him as insolvent is under an obligation to satisfy the Court, by furnishing necessary information and any failure in that regard would entail in rejection of the application under Section 25 (2) of the Act."

14. In Kota Sivarama Prasad Vs. Shaik Mastan Vali and another², the Hon'ble High Court held that,

A debtor cannot be declared as insolvent, unless he establishes satisfactorily by conclusive prove that he is unable to pay debt.

15. In Chittineni Mobana Rao Vs Jagarlmudi Subbarao³, the Hon'ble High Court held that,

the proposed insolvent has only to satisfy the court as to existence of prima facie grounds which in turn must disclose that the assets held by him are not adequate to meet the liabilities.

16. In T.Chandraskharaiah Vs. D.Sreramulu Chetty and others⁴, the High Court was pleased to examine the provisions of Insolvency Act extensively with emphasizing on Sec.10 and Sec.24 of the Provincial Insolvency Act. Ultimately, it was held that,

even though the petitioner, who seeks himself to be declared as an Insolvent need not prove his case beyond reasonable doubt, but he should lead evidence and or place prima facie material before the Court, so as facilitate the Court to reach to conclusion that he is an Insolvent. He should place all such material before this court which would prima facie show that there exists grounds to believe that he is unable to discharge the debts of the respondents, and he became insolvent.

17. On the touchstone of the above legal principles, this Court now proceeds to test the case of the petitioner/debtor.

18. To comply with mandatory requirements under Section 10(1) of the Act that the debts and liabilities of the petitioner exceeded his properties

2 2014 (3) ALT 602

3 2010 (6) ALD 514

4 2005 (1) ALT 407

and, thereby, he was unable to pay debts, he relied on his testimony. He examined himself as P.W.1. He reiterated the averments of the petition in his chief examination affidavit. Respondents failed to cross-examine him. Thus, his chief examination became unchallenged.

19. In order to prove debts, except for the self-testimony of P.W.1, the petitioner did not produce any documents like a counterfoil, etc. But, he furnished particulars of debts, i.e., quantum of debt, nature of debt, and details of the creditors, in petition 'A' schedule property. On the other hand, respondents failed to cross-examine P.W.1. Therefore, the debts cannot be doubted.

20. For a better understanding, the particulars of debts shown in petition 'A' schedule property are stated hereunder:

'A' schedule

Sl.No	Name of the Creditor	Amount due	Nature of debt
1.	SukhavasiRavichandra	Rs.10,00,000/-	NJSP 100/-
2.	Shaik Baji	Rs.10,00,000/-	Hand Loan
3.	Shaik Mastan	Rs.5,00,000/-	Hand Loan
4.	Mila Venkata Rao	Rs.2,00,000/-	Hand Loan
5.	Shaik Mustafa	Rs.3,00,000/-	Hand Loan
6.	Shaik Rasool	Rs.1,00,000/-	Hand Loan
7.	Pathan Mastan	Rs.5,00,000/-	Hand Loan
	Total	Rs.36,00,000/-	

21. The above 'A' schedule property demonstrates that the petitioner is indebted to Rs. 36,00,000/-. Now the question is, whether his debts exceed his properties?

22. The petitioner showed his properties in petition 'B' schedule property. As seen from the petition B schedule, immovable property, bank securities, outstanding, and cash on hand (B1 to B4) are shown as nil. But he showed his movables in the B5 schedule as worth about Rs. 500.

23. It is clear from the petition 'A' and 'B' schedule property that the debts and liabilities of the petitioner are greater than the property shown in the petition 'B' schedule. Thereby, the petitioner complied with mandatory requirements under Section 10(1) of the Act to adjudge himself as insolvent.

24. In view of the above facts and circumstances, this Court is of the opinion that the petitioner is entitled to be adjudged insolvent. Accordingly, this point is answered.

25. In the result, the petition is allowed by adjudging the petitioner as insolvent by giving six months time to discharge. All his properties are vested with the Official Receiver to deal with them according to the provisions of the Provincial Insolvency Act, 1920. The office is directed to send a copy of this order to the District Collector, Guntur, for Gazette publication in compliance with Sec. 30 of the Provincial Insolvency Act.

Typed to my Dictation, corrected and pronounced by me in the Open Court, on this the 17th day of August, 2023.

Y. GOPALA KRISHNA,
I Additional Senior Civil Judge,
Guntur.

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

For Petitioner:

P.W.1 : Sannayila Nagur

For Respondents: NIL.

DOCUMENTS MARKED

NIL.

Y. GOPALA KRISHNA,
I Additional Senior Civil Judge,
Guntur.